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PROJECT NO. 51830

REVIEW OF CERTAIN RETAIL ELECTRIC CUSTOMER PROTECTION RULES	**§ § §§**	**BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS**

COMMENTS OF THE COALITION OF COMPETITIVE RETAIL ELECTRIC PROVIDERS TO COMMISSION STAFF'S STRAWMAN PROPOSAL

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I. INTRODUCTION

The Coalition of Competitive Retail Electric Providers[1] (CCR) appreciates the opportunity to comment on Commission staff's strawman rule. As discussed by Commission staff, these proposed rule amendments purport to implement House Bill 16, relating to the regulation of certain retail electric products, and section 9 of Senate Bill 3, relating to preparing for, preventing, and responding to weather emergencies and power outages; increasing the amount of administrative and civil penalties, as adopted by the 87th Texas Legislature.

As such, Commission staff has proposed amendments to 16 TAC §§ 25.471, 25.475, and 25.479.

At the outset, the CCR would note that proposed amendments found in §25.475 that seek to amend the definition of a fixed rate product (§25.475(b)((5)) such that the price clearly includes ancillary service charges, would appear to be beyond the scope of the statutes being cited by Commission staff as the authority to promulgate these rules. Further, requiring REPs to obtain an Acknowledgement of Risks for products passing through ancillary service charges, or any other type of indexed product, exceeds the scope of requirements contained in HB 16.

II. RESPONSE TO BRIEFING QUESTIONS

1. If the Commission removes the RTSPP from the POLR rate formulas, what would be an equitable approach to POLR pricing moving forward?

The POLR is intended to provide electric service in two scenarios: (1) a customer proactively chooses to receive service from a POLR (in lieu of making a choice to receive service from any other REP); and (2) when a REP exits the market unexpectedly and it is necessary to perform a mass transition of customers from that REP to the POLR to ensure that

[1] The Coalition of Competitive Retailers supporting this filing including those in Attachment One.

those customers maintain continuity of service. These two scenarios would ideally result in two different product types. One product could be more of a standard competitive offer whereby the POLR can adequately hedge its likely customer acquisitions in the normal course of business, while the other a product could be more responsive to market prices. The product that is more responsive to market prices would alleviate the risk of serving a high volume of customers that may be acquired with minimal notice which could result in the POLR needing to purchase additional generation on the spot market to properly serve the new load. It is this second scenario wherein the challenge of how to properly compensate a POLR arises. It would be wise to better define POLR prices as those prices are meant to serve these "default" customers – customers who were transitioned to the POLR as the default provider through no fault of the customer.

POLR prices are meant to incentivize customers to select a new REP and move off of POLR service expeditiously. The CCR is not suggesting that POLR prices be set artificially high, but does note that the existing POLR formula on which the Commission is now seeking comment, reflects a pricing structure that seeks to fairly compensate the POLR for acquiring load with little advance notice.

The CCR believes that the Commission has the ability to ensure that any REPs selected to serve as the POLR are already adequately hedged, and therefore should have little exposure to the spot market. Given the short nature of expected POLR service, it also makes sense that POLR service be considered to be on a month-to-month basis, leaving the only product options as indexed or variable products.

The existing POLR formula results in a POLR price only being known after the fact, as it is directly passes through the Real Time Settlement Price Points (RTSPPs). One solution would be to introduce a lag time into the formula whereby last month's RTSPPs are used to set this

month's POLR rate. That would allow the price to be known in advance (at the start of each month) while de-coupling "the direct pass-through" of the RTSPPs. Another solution would be to simply set a rate based on RTSPPs for the prior year. Again, this would allow the POLR rate to be set in advance which provides pricing certainty for customers who may be migrated to POLR service.

The CCR is also exploring whether one of the Intercontinental Exchange (ICE) products could be used as part of the formula for determining the POLR rate. However, we do not have a specific proposal at this time.

2. What other considerations should the Commission take into account in determining whether and how to remove RTSPP from the POLR rate formulas (e.g. the role the POLR rate plays in §25.498, related to prepaid service, etc.)?

The main purpose of POLR service is to provide temporary, uninterrupted supply should a customer's chosen REP leave the market unexpectedly. To serve transitioning customers, POLRs purchase power on the spot market, which is traditionally much more volatile than the cost of load that has been hedged in the forward (bilateral) market. So it seems like the POLR price mechanism which relies on the RTSPP is very short-term in nature and may be subject to serious interval-by-interval fluctuations in its underlying price.

At the same time, the POLR rate serves as a price cap for prepay service as prepay REPs are precluded from charging rates higher than the POLR rate.[2] The conflict is that while prepay REPs should be engaged in responsible hedging on behalf of their customers they are subject to a fluctuating and volatile cap. Current Commission rules provide a smoothing out of the RTSPP over a few historical periods to remedy this inherent conflict. In the alternative, a forward ICE contract may provide a better more stable less volatile prepay price cap and could be considered.

[2] PURA §39.107(g)

The Commission could also consider adopting a pricing structure for POLR service that reflects the expectation that load is acquired quickly by POLRs who may not be properly hedged to serve that load. The CCR suggests that this could be done by simply using the historical RTSPP's to calculate a going forward rate, which also provides better visibility to customers and prepay REPs as to the POLR rate.

III. COMMENTS ON §25.471

The CCR has no comments on the proposed changes to §25.471 at this time. We reserve the right to make comments or reply comments on changes to this section as this rulemaking project advances.

IV. COMMENTS ON §25.475

§25.475 (b)

(b)(5) – Fixed Rate Product

The CCR does not support staff's proposed change to the definition of "fixed rate product." The CCR also notes that as "price" is defined, it is only known or "fixed" at a specified level of usage, such as those shown on the EFL. Nothing in existing Commission rules requires REPs to present their rates in either a "bundled" (meaning inclusive of all recurring charges) or "unbundled" (meaning the specific line item identification of some or all of the recurring charges) format, beyond the requirements to show a "price" as required by Commission rules at time of enrollment, on the Electricity Facts Label, and on the customer's bill.

As the Commission is aware, a REP bills the customer for several components of service necessary to provide electricity to the end use customer: generation (i.e. electricity) expenses, transmission and distribution charges, ERCOT charges, and taxes (state, local, gross receipts, and the PUC Assessment). As we also know, TDU charges are regulated and governed by tariffs and include base charges and volumetric charges. Generation costs are set by the REPs based on their

supply contracts and may include base charges and volumetric charges. Taxes are known and fixed by the various taxing entities. However ERCOT charges are a combination of costs that are known in advance and costs that are only known after the fact.

By including ancillary service charges in the list of recurring charges, the Commission is effectively prohibiting REPs from passing through the actual ancillary service charges the REP receives from ERCOT. Instead, REPs would have to absorb any deviations in such charges from the "fixed" amount it sets as part of its generation costs. In a sense, the Commission is forcing REPs to "bundle" ERCOT charges into its generation charges. While the CCR appreciates the Commission's concern that "fixed" should mean "fixed," by its very nature, a "price" (as that term is defined) is not "fixed" (except at a specific level of usage). Prior Commissions have understood that, effectively, REPs can only control the costs on a certain portion of the customer's bill (the energy/generation portion). The rules were structured to allow the competitive marketplace to determine which marketing methods were more effective vis-à-vis bundled or unbundled price presentations. TDU charges are pass-through and irrespective of whether a REP has presented a product in a bundled format. Further, §25.479(c)(4) requires all REPs "to provide an itemization of charges, including non-bypassable charges, to the customer upon the customer's request and, to the extent the charges are consistent with the terms set out in paragraph (2) of this subsection, the terms shall be used in the itemization." In other words, all customers have the right to see the unbundled components of their bill, even if they were sold a bundled product.

The existing definition of "fixed rate product" allows REPs to pass through "actual changes in TDU charges, changes to the ERCOT or Texas Regional Entity administrative fees charged to loads, or changes resulting from federal, state, or local laws that impose new or modified fees or costs on a REP that are beyond the REP's control." The intent of this language is to make clear that all these items are "beyond the REP's control." Also, the definition of

"indexed product" also includes "regulatory actions" in the list of items that are beyond a REP's control.[3]

The strawman rule suggests that Ancillary Service Charges are not part of the ERCOT fees charged to loads, but rather a generation expense that is under the control of the REP, and hence something that could be "fixed." But Ancillary Services are not like energy, which is procured by the REP before it is needed; Ancillary Services are procured by ERCOT – the REPs have no control over the Ancillary Service market.

The CCR suggests that the definition of a "fixed rate product" be modified to more clearly disclose to customers what is actually "fixed" depending on whether the REP is marketing their product in a "bundled" or "unbundled" fashion. If a REP chooses to market a "fixed rate product" as "bundled," then what is "fixed" should be the "bundled" rate (i.e. the rate that reflects all components of service: generation + TDU charges + ERCOT charges. That REP would then be precluded from passing through increases to any of those components, should they change. However, if a REP chooses to market its product in an unbundled manner, it should be allowed to state that the generation portion is "fixed" while the remaining elements are passed-through. Again, the confusion stems from describing the "price" as fixed rather than what components of the price are "fixed."

If the Commission intends to force REPs to offer a "fixed price" that includes all the recurring elements without allowing the REP to re-coup increased costs (like TDU rate changes), the Commission should understand either that very few REPs would choose to offer such products in the future, or that the prices of those products will increase to reflect the inability to make later adjustments.

[3] 16 TAC §25.475(b)(6)

The CCR also expects the Commission to honor that same notion in reverse and not expect REPs to "flow through" rate decreases on fixed rate products. If "fixed" is to mean "fixed," then neither customers nor the Commission should expect REPs to make rate reductions, unless a REP chooses to do so.

As an alternative, the Commission could explore requiring REPs to simply present offers and bills in an unbundled fashion: generation, transmission & distribution, ERCOT, and taxes. This would allow REPs to clearly market generation as "fixed" while acknowledging that these other components can, and do, change.

(b)(9) – Price

The CCR does not object to the inclusion of ancillary services in the definition of price as it is an example of a recurring charge. The CCR notes, however, that the term "price" is used on the EFL to help customer's compare an "all-in" price so that customers can make an apples to apples comparison among REPs. Pursuant to the enrollment provisions in PUC SUBST. R. §25.474, the customer is also told the "price" when they enroll (and again depending on how the REP is presenting their offer, the customer may be told specific rate components as well). Finally, as required by the billing rule (§25.479), this same "price" is also calculated on a customer's bill so they have a means of seeing the "all-in" price on their bill and using that to evaluate EFL offers.

Again, the confusion of the strawman rule is in attempting to state that the "price" is "fixed" rather than spelling out the specific rate elements that comprise that price.

§25.475(c)(3)(G)

This sub-section should be deleted in its entirety as the proposed language exceeds the scope of provisions contained in HB 16. First, HB 16 only precluded residential and small commercial customers from enrolling in Wholesale Indexed Products, not other types of indexed products. The current language of §25.475(c)(3)(F) adequately addresses the scope of the HB 16

requirement.

HB 16 contained no authority for the Commission to limit what types of products in which a large commercial or industrial customer could enroll. Rather, it only specified that an Acknowledgement of Risk be obtained prior to enrolling on a Wholesale Indexed Product, not any indexed product, nor any other product that contains "a direct pass-through of ancillary service charges."

Finally, large commercial customers are sophisticated buyers that possess the ability to negotiate their own contract terms, and to understand the contract terms presented to them. There is simply no reason to extend additional protections to this class of customer beyond those authorized in HB 16.

§25.475(e)(2)(D)

The CCR believes the staff mistakenly changed the wording of the final clause of this sentence by inserting the word "and" between the words "provided" and "the customer selects…" instead of the word "or."

The CCR recommends the following change to correctly implement the relevant provision of HB 16:

> (D) If a REP does not provide the required notice of the expiration of a customer's contract and the customer does not select another retail electric product before expiration of the contract term, the REP must continue serving the customer under the terms of the fixed rate contract until sufficient expiration notice is provided ~~and~~ or the customer selects another retail electric product.

§25.475(f)(7)

The Commission should clarify that the language proposed in §25.475(f)(7) meets the requirements found in proposed new §25.475(c)(3)(D). If the proposed language does not meet the intent of the requirement found in §25.475(c)(3)(D), the CCR asks the Commission to clarify what additional information must be included to comply with the requirement found in

§25.475(c)(3)(D).

Further, the CCR recommends revising this provision to be more consistent with the requirements found in proposed §25.475(e) as relates to the timing of contract expiration notice delivery. Without changes, this provision would mislead customers into a more generic requirement that expiration notices for all customer classes and product types will be sent at least 14 days prior to the end of the initial contract term. The CCR proposes the following alternative language:

> **(7) Contract expiration notice.** ~~For a term contract, t~~The TOS must contain a statement informing the customer of when they should expect to receive a contract expiration notice for the specific type of product on which they are enrolled and consistent with the provisions of subsection (e)(1) and (e)(2) of this section. The TOS must also state that if the customer fails to take action to ensure the continued receipt of retail electric service upon the contract's expiration, the customer will continue to be served by the REP automatically pursuant to a default renewal product, which must be a month-to-month product.

§25.475(j)

The CCR recommends the following changes (as shown, redlined, below):

(1) eliminate the requirement for an Acknowledgement of Risk for any customer to enroll on an indexed product or a product that "contains a direct pass-through of ancillary service charges" as that is beyond the scope of HB 16;

(2) to make clear that only eligible customers can enroll on a wholesale indexed product; and

(3) that would allow for other methods for obtaining customer consent, beyond a signature, to the Acknowledgement of Risk.

The CCR Proposed Rule Language:

> **(j) Acknowledgement of Risk.** Before an eligible customer's enrollment in ~~an indexed product,~~ a wholesale indexed product~~, or a product that contains a direct pass-through of ancillary service charges~~, an aggregator, broker, or retail electric provider must obtain an AOR, ~~signed by the customer~~by means of one of the

methods authorized in §25.474 of this title (relating to Selection of Retail Electric Provider), verifying that the customer accepts the potential price risks associated with the product.

~~(1) For Wholesale Indexed Products t~~The AOR must include the following statement in clear, boldfaced text: "I understand that the volatility and fluctuation of wholesale energy pricing may cause my energy bill to be multiple times higher in a month in which wholesale energy prices are high. I understand that I will be responsible for charges caused by fluctuations in wholesale energy prices."

~~(2) For Indexed Products other than Wholesale Indexed Products the AOR must include the following statement in clear, boldfaced text: "I understand that the volatility and fluctuation of indexed pricing based on non-fixed indices may cause my energy bill to be multiple times higher in certain billing periods. I understand that I will be responsible for charges caused by fluctuations in the non-fixed indices and the resulting indexed price."~~

~~(3) For products that contain a direct pass-through of ancillary service charges the AOR must include the following statement in clear, boldfaced text: "I understand that my energy bill may include a direct pass-through of ancillary service charges, which may cause by bill to be multiple times higher in billing periods in which ancillary services charges are high. I understand that I will be responsible for charges caused by fluctuations in ancillary service charges."~~

V. COMMENTS ON §25.479

§25.479(d)

The CCR does not have any comments on proposed (d)(1). Rather, the CCR recommends adding a new paragraph (d)(2) to incorporate the requirement to provide Hurricane Preparedness notices each summer. This would ensure that REPs are aware of all existing public service notice requirements.

VI. PRAYER

WHEREFORE, PREMISES CONSIDERED, the Coalition of Competitive Retailers respectfully requests that the Commission publish a rule for adoption that reflects the comments above. . Additionally, we reserve the right to provide further comments on any proposed changes.

Respectfully Submitted,

By: _____

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ATTORNEY FOR THE COALITION OF COMPETITIVE RETAILERS

Attachment One

Coalition of Competitive Retail Electric Providers Supporting These Comments

Background

The Coalition of Competitive Retailers is an ad hoc group of competitive Retail Electric Providers that joined together in its desire to address the market issues stemming from the February 2021 Winter Weather Emergency.

Participants in this filing:

Alliance Power Company LLC
AP Gas & Electric (TX) LLC
Brooklet Energy Distribution LLC
Eligo Energy TX LLC
Summer Energy LLC
Young Energy LLC